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Paper No.

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**OFFICE OF PETITIONS**

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In re Patent No. 7,597,886 : DECISION ON REQUEST  
Yu et al. : FOR  
Issue Date: October 6, 2009 : RECONSIDERATION OF  
Application No. 09/899,059 : PATENT TERM ADJUSTMENT  
Filed: July 6, 2001 : and  
Atty Docket No. 075977-0122 : NOTICE OF INTENT TO ISSUE  
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 26, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand and twenty-two (2022) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two thousand and twenty-eight (2028) days is **GRANTED to the extent indicated herein.**

The Office mailed a decision on a request for reconsideration of patent term adjustment on September 28, 2010, which set a non-extendable period for response of one month. As such, this submission was timely filed.

Petitioner has indicated that this patent is not subject to a terminal disclaimer.<sup>1</sup>

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on May 22, 2009

<sup>1</sup> Petition, page 2.

and a notice of allowance was subsequently mailed on May 27, 2009. The 6 days of the over three year period consumed by appellate review, beginning on May 22, 2009 and ending on May 27, 2009, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 6 days are excluded.

Moreover, the Office had determined that the 947-day period between July 12, 2004 and February 14, 2007 overlaps with the B-delay.

As such, the patent term adjustment is increased by 2028 (1469 examination delay + 965 (1918 over three years - 6 excluded - 947 overlap) - 406 applicant delay) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Any subsequent filing pertaining to this matter should indicate that the attorney handling this matter is Paul Shanowski, and may be submitted by mail,<sup>2</sup> hand-delivery,<sup>3</sup> or facsimile.<sup>4</sup> Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.<sup>5</sup>

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of

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<sup>2</sup> Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

<sup>3</sup> Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

<sup>4</sup> (571) 273-8300: please note this is a central facsimile number.

<sup>5</sup> <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

the above-identified patent is extended or adjusted by **two thousand and twenty-eight (2028) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanowski/  
Paul Shanowski  
Senior Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,597,886 B2

DATED : Oct. 6, 2009

**DRAFT**

INVENTOR(S) : Yu et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1861 days

Delete the phrase "by 1861 days" and insert – by 2028 days--